



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 26, 1998

Mr. Jerome Aldrich  
Criminal District Attorney  
Brazoria, County  
111 East Locust, Rm. 408A  
Angleton, Texas 77515

OR98-2492

Dear Mr. Aldrich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #118984.

As District Attorney of Brazoria County, you received an open records request for the following information:

Transcripts of all deposition testimony - written, audio recorded and/or videotaped - taken in Civil Action No. G-96-703 styled *James T. Kesler, et al. v. Brazoria County Sheriff King, et al.*

You submitted to this office a copy of the complaint filed in this action with a copy of your request for an opinion. Upon receipt of a request from this office for copies of the information requested, you submitted to this office a condensed transcript in three volumes of the deposition of Emory Joseph King, the Sheriff of Brazoria County, as a representative sample of the information requested. These documents and the complaint indicate that the *Kesler* litigation involves allegations of violations of civil rights and the use of excessive force against prisoners at the Brazoria County Detention Center. Your office is representing Sheriff King and Brazoria County in their defense of this litigation.

Your opinion is that the information sought falls within the exception from public disclosure covering information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party." Gov't. Code §552.103(a). You contend that the requested information meets the two prong test for section 552.103 that (1) litigation to which the governmental body is a party is either

pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

We have considered the exception you claim and have reviewed the representative sample of the documents at issue. The Open Records Act (the "Act") does not authorize any restriction on disclosure of information not explicitly provided by its terms. Gov't. Code §552.006. The Act serves a purpose that is very different than the purpose of the rules governing discovery.

The litigation exception was intended to prevent the use of the Open Records Act as a method to avoid discovery rules. The fundamental purposes of the Open Records Act and of discovery provisions differ. In a lawsuit, discovery provides an orderly and proper means for the development of relevant information under the supervision of a court of appropriate jurisdiction. . . . The Open Records Act, on the other hand, governs the public's right to information in the possession of governmental bodies.

Open Records Decision No. 551 at 4 (1990) citing Attorney General Opinion JM10-48 and Open Records Decision No. 454 (1986).

The events that are the subject of the *Kesler* litigation by James T. Kesler are public. All parties to the litigation have the information in these depositions. You cite Open Records Decision 551 (1990) to support your contention that the requested information is exempt from disclosure, but that decision explicitly provides:

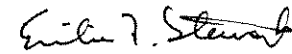
**. . . [T]he litigation exception may no longer be claimed with respect to a particular lawsuit once all parties have inspected the information pursuant to discovery. (Emphasis added.)**

Open Records Decision No. 551 at 4 (1990) citing Attorney General Opinion JM10-48 and Open Records Decision No. 454 (1986). *See also* Open Records Decision Nos. 638 at 3 (1996), 349 at 2 (1982) and 320 at 1 (1982). Any potential adverse effect of disclosure on the trial of the *Kesler* case is a matter of concern for the court, which has authority to issue protective orders. FED. R. CIV. P. 26(c). *See Word of Faith World Outreach Center Church, Inc. v Morales*, 143 F.R.D. 109 (W.D. Tex. 1992). Absent an order of the court prohibiting disclosure, there is no basis in the Act for withholding the requested information. *See* Gov't Code §552.107(2). The depositions that you seek to withhold must be disclosed under the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 118984

Enclosures: Submitted documents

cc: Mr. Jason Spencer  
The Facts  
P.O. Box 549  
Clute, Texas 77531  
(w/o enclosures)